

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-Publication of Notice Statement)

Amend Subsection (e)(2) of Section 122 or Repeal
Subsections (e)(2), (f)(2) and (f)(3) of Section 122
Title 14, California Code of Regulations
Re: Commercial Lobster Fishing Permits

- I. Date of Initial Statement of Reasons: November 5, 2002
- II. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: August 2 2002
Location: San Luis Obispo, CA
 - (b) Adoption Hearing: Date: February 7, 2003
Location: Sacramento, CA
- III. Description of Regulatory Action:
 - (a) Description of Problem or Condition that Regulation Change is Intended to Address:

State Law (Sections 8254 and 8259, Fish and Game Code) authorizes the Commission to set the conditions for issuance of and to limit the number of commercial lobster permits.

Commission regulations (Section 122, Title 14, CCR) set those conditions and establish a fishery capacity goal of 225 lobster operator permits. Prior to November 1, 1994, there was no limit on the number of lobster fishing permits that could be issued. Effective that date, no more could be issued for the 1994-95 season, and permits for the 1995-96 season could only be issued to those who possessed a valid 1994-95 permit.

Since November 1994, the regulations have been amended three times to establish a capacity goal (225) and procedures for the issuance of new permits. In addition, the Commission adopted a comprehensive policy regarding restricted access commercial fisheries in June 1999.

The California Lobster and Trap Fishermen's Association (Association), an industry organization, approached the Commission in March, 2002, to request a

review of the restricted access program to address their concerns regarding fishery capacity and permit transferability. Specifically, the Association requested a reduction of the capacity goal to 150 and a provision for permit transferability on a two for one basis.

In its analysis of that request, the Department reported that they agreed a review was needed and that changes to the lobster restricted access program may be warranted. However, the Department could not undertake this collaborative review process with the lobster industry until 2003. Any regulations adopted would be effective in time for the 2004 -2005 license year which begins on April 1, 2004.

The Association then asked the Commission to put a moratorium on the issuance of new permits (the lobster permit lottery) pending the Department's review of the entire program.

- (b) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining the Regulation change and Factual Basis for Determining the Regulation Change is Reasonably Necessary:

The proposed regulatory change is needed to hold the number of lobster operator permits at or below the current capacity goal of 225 pending a review of the lobster restricted access program. Although the Department has not evaluated a new capacity goal, landing data and anecdotal information on the increasing number of traps being used by a number of lobster fishermen suggests the revised capacity goal will be less than 225.

- (c) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Sections 8254 and 8259, Fish and Game Code.

Reference: Sections 2365, 7852.2, 8250-8259 and 9000-9006 and 9010, Fish and Game Code.

- (d) Specific Technology or Equipment Required by Regulatory Change: None
- (e) Identification of Reports or Documents Supporting Regulation Change: Spiny Lobster Management Considerations, p. 563 in California's Living Marine Resources: A Status Report. Dec. 2001

IV. Description of Alternatives to Regulatory Action:

(a) Major Alternatives to Regulation Change:

Establish a new fishery capacity goal and a mechanism for transfer of permits that would provide a method to achieve that goal. This alternative was rejected because the Department does not have the staff available to complete this alternative in time to be effective for the 2003-04 lobster season. Additionally, lobster season opened on October 2, 2003, which means that all the lobster fishermen are out for long hours and are unavailable for consultation or meetings with Department personnel concerning their restricted access program.

Deckhands who assist lobster operators with their trapping activities are required to purchase a lobster crewmember permit. In order to be eligible for the lobster permit lottery, a commercial fisherman must have held a valid, unrevoked lobster crewmember permit in the two immediately preceding license years. This year, 54 lobster crewmembers entered the permit lottery. Individuals in this group of lottery entrants feel strongly that a moratorium on the lottery unjustly deprives them of a limited opportunity to gain access to the fishery as full-fledged participants. To date, 237 lobster operator permits and 181 lobster crewmember permits have been issued. In 2001, there were 246 lobster operator permits and 197 lobster crewmember permits issued, and 43 applicants for the lobster lottery.

It was suggested by several crewmembers that the lottery still be held, but the permits issued be restricted to a certain number of traps or by being nontransferable.

This alternative was rejected because the purpose of the moratorium is to prevent an increase in the number of fishermen while the whole program is under review. Currently the capacity goal of 225 has still not been achieved. It is anticipated that trap limits and transferability will be addressed in the amended restricted access program. Allowing a small number of permits to be issued with a different set of restrictions would be difficult to enforce and counterproductive to the goal of a restricted access program, which is to match the level of effort with the harvestable resource so a sustainable fishery is ensured.

The Department has provided an option that would only make the regulatory language providing for a lobster permit lottery inoperative for the next two fishing seasons. That way the lottery would resume if the program revision is not completed as planned, or if the amended program does not allow for transferability.

(b) No Change Alternative:

The no change alternative would likely allow a number of new entrants into the fishery when there is a request to reduce the capacity goal.

(c) Consideration of Alternatives:

In view of information currently possessed, no alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action - Economic, Jobs, Local Agencies, State Agencies, Housing Costs and School Districts:

The Commission has assessed the potential for significant adverse economic impacts that might result from the proposed regulatory action and it has made the following determinations relative to the required statutory categories:

(a) Significant Adverse Economic Impact on Businesses, Including Small Businesses:

The proposed regulations are not expected to have a significant adverse economic impact on businesses because they would only temporarily delay new entrants into the fishery. Each existing lobster operator permit holder is considered a small business and the proposed regulations would have no impact on them.

(b) Economic Impact on Private Persons: None

(c) Adversely Impact the Ability of California Businesses to Compete with Businesses in Other States: No.

(d) Impact the Creation or Elimination of Jobs or Businesses or the Expansion of Businesses in California: No.

(e) Adverse Fiscal Impact on Public Agencies, Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

- (f) Involve Nondiscretionary Costs/Savings to Local Agencies: No.
- (g) Mandate Programs on Local Agencies or School Districts: No.
- (h) Impose Costs to Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: No.
- (i) Affect Housing Costs: No.

VII. Plain English Policy Statement Requirement When Businesses are Affected by Proposed Regulation Change.

It has been determined that the adoption/amendment of these regulations may affect small businesses. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342(e) and 11356.2(a)(1).

Informative Digest (Plain English Overview)

Existing regulation establishes a capacity goal of 225 lobster operator permits and the procedures for issuance of any new permits which may be available each year. (Section 122, Title 14, CCR)

The proposed amendments would repeal the capacity goal and the procedures for issuance of new lobster permits. This would eliminate the lobster permit lottery while a review of the entire lobster restricted access program takes place.

Alternative language is provided which would make the subsection on the lobster permit lottery and the capacity goal of 225 inoperative between April 1, 2003, and March 31, 2005.